CF-1000 (3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WP No. 3754 **/2004**

PETITIONER :

P.R. No. 3753/04
Presented by Shri U. Bajpai
dated 06/X/04

Pawan Kumar Chaurasiya, S/o Shri Bans Gopal Chaurasiya, aged about 21 years, R/o E- 1/2 Nehru Chowk Bilaspur, C.G.

-Versus-

RESPONDENTS :

1. The State of Chhattisgarh, Through the Secretary, Department of Health and Family Welfare, Mantralaya, DKS Bhawan, Raipur (CG)

2. Govt. Dental College Raipur, through Chief Executive Officer, Govt. Dental College Raipur, C.G.

3. Chhattisgarh Dental College and Research Institute Sundera, Rajnandgaon, through the Dean.

RECEIVED COPY 6/X/04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. **Particulars of the petitioner** :

   As given in the cause title.

2. **Particulars of the respondents**

   As given in the cause title.

3. **Particulars of the orders against which this petition is made.**

(51)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3674 of 2004

Hitesh Kumar Gavel

- Versus -

State of Chhattisgarh and three others

AND

Writ Petition No.3754 of 2004

Pawan Kumar Chaurasiya

- Versus -

State of Chhattisgarh and two others

POST FOR ORDER ON 3rd NOVEMBER, 2004

Sd/-
L.C.BHADOO
Judge

(52)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3674 of 2004

Hitesh Kumar Gavel

- Versus -

State of Chhattisgarh and three others

AND

Writ Petition No.3754 of 2004

Pawan Kumar Chaurasiya

- Versus -

State of Chhattisgarh and two others

Present: -

Mr. Anand Kumar Tiwari, Advocate:	For the petitioner in W.P. No.3674/2004
Mr. Dhirendra Mishra, Advocate:	For the petitioner in W.P. No.3754/2004
Mr. N.K. Agrawal, Dy. Advocate General:	For the State/respondents No.1 & 2 in W.P.No.3754/2004 and for all the respondents/State in W.P.No.3674/2004.
Mr. Prashant Mishra, Advocate:	For respondent No.3 in W.P. No.3754/2004.

O R D E R

(Passed on 3rd November, 2004)

L.C. BHADOO, J.

1. By W.P.No.3674/2004 (Hitesh Kumar Gavel vs. State of Chhattisgarh and others) and W.P.No.3754/2004 (Pawan Kumar Chaurasiya vs. State of Chhattisgarh and others) the petitioners have questioned the action of respondents No.1 & 2, not admitting them in 1st year of B.D.S. Course on the ground of non-production of original testimonials, therefore, they are being disposed of by this common order.

2. Both the petitioners had appeared in the P.M.T. Examination 2004 for admission to various medical and dental college courses as per the Chhattisgarh Medical and Dental Graduate Entrance Examination Rules, 2003 (for short 'the Rules, 2003), conducted by the Chhattisgarh

(53)

Madhyamik Shiksha Mandal, Raipur, on 4th & 6th June, 2004. In the month of August, 2004, based on the merit list, petitioner Hitesh Kumar Gavel was given admission in the College of Veterinary Science & Animal Husbandry, Anjora, District: Durg. Based on the merit list, petitioner Pawan Kumar Chaurasiya after appearing in the counselling took admission in the 1st year BDS course in Chhattisgarh Dental College & Research Institute, Sundera, Rajnandgaon. However, in the mean time, respondent No.2 Director, Medical Education, State of Chhattisgarh, issued notification on 27.9.2004 that the Government Dental College, Raipur, has received approval from the Government for admission in B.D.S. course; last date of admission is 30th September, 2004, eligible candidates are being informed by post, but since the time left is very short, therefore, general category candidates who have secured 50% and reserved category candidates who have secured 40% marks in the PMT Examination, 2004 are entitled to appear for counselling in the Government Dental College, Raipur on 29th September, 2004 at 8.30 a.m., on that day after counselling, the seats will be filled-up and the remaining vacant seats will be filled-up on 30th September, 2004. According to the said notification, both the petitioners appeared in the Government Dental College, Raipur and both of them deposited Rs.500/- registration fees, however, they were denied admission merely on the ground that original testimonials were not produced by them at the time of counselling, even though they were eligible as per their merit.

3. The case of the petitioners is that as they had already deposited their original testimonials in the above colleges where they took admission i.e. College of Veterinary Science & Animal Husbandry, Anjora, District: Durg, and Chhattisgarh Dental College & Research Institute, Sundera, Rajnandgaon, a necessary certificate from those institutions showing that the original testimonials are deposited with them along with the attested true copies of the testimonials were produced by them, even then, that was not considered valid. Even the petitioners asked for one-day time for producing the originals, but the same was also denied and the admission was refused. Further case of the petitioners is that they have been denied admission on irrelevant grounds and the decision of the respondents, being irrational and arbitrary, is violative of Articles 14, 16 & 21 of the Constitution of India. Hence, both of them have requested that the respondents be directed to admit the petitioners in the Government Dental College, Raipur.

(54)

4. Similar return has been filed on behalf of the State/respondents in both the cases in which it has been mentioned that submission of original testimonials at the time of counselling was the condition precedent which was made clear in the advertisement/notification, as also mentioned in the Rules, 2003. The condition of the submission of original documents was absolutely necessary and the same was not complied with, therefore, it was not possible for the respondents to give admission to the petitioners. 30th September, 2004, being the last date, thereafter, admission was not possible, therefore, admission to the petitioners was rightly refused.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioners Mr. Dhirendra Mishra and Mr. Anand Kumar Tiwari argued that at the time of counselling the petitioners had submitted attested copies of the testimonials, as well as the certificate (Annexure P-4) from the institutions where their original testimonials were deposited. They also requested for one day time to produce the originals, even then the time was not granted and admission to 1st year B.D.S. Course was refused to them in an arbitrary manner without going through the documents. They further argued that since the original documents were already deposited with the institutions where the petitioners were studying and no time was allowed to them to produce the same. By notice dated 27.9.2004 very short time was given to them to produce the documents, therefore, they have been denied admission for no fault on their part.

7. On the other hand, learned Deputy Advocate General Mr. N.K. Agrawal argued that as per the Rules, 2003, the petitioners were required to produce original testimonials and that was a condition precedent, therefore, in absence of those testimonials, the respondents had rightly refused admission to the petitioners.

8. Having heard learned counsel for the parties, I have perused the petitions and relevant documents. It is an admitted position that the petitioners appeared in the PMT Examination, 2004, on the basis of merit secured by them, petitioner Hitesh Kumar Gavel was admitted in Veterinary College, Durg, and petitioner Pawan Kumar Chaurasiya was admitted in Dental College, Rajnandgaon, and their original testimonials were deposited there. It is also admitted position that the respondent Dental College, Raipur, received approval for admission from the Government at a very later stage and issued notification only on 27.9.2004 for appearing in counselling and

55

the counselling was fixed on 29.9.2004. Therefore, in the circumstances, no breathing time was left for the eligible candidates to produce their original testimonials after collecting the same from their respective institutions where they were deposited. The petitioners produced attested copies of the testimonials as well as the certificate (Annexure P-4) from the institutions where their original testimonials were deposited.

9. Therefore, looking to the peculiar facts and circumstances of the case and in view of the fact that very short time was given to the candidates, the respondents ought to have relied on the attested copies of the testimonials and also the certificate (Annexure P-4) issued by the institutions where the originals were deposited and they should have allowed provisional admission subject to production of original documents within a day or two. The petitioners' case was not a case where they appeared in the counselling without any document. In order to substantiate their claim they produced attested copies of the testimonials along with certificate of the institutions where their original testimonials were deposited. Moreover, as per the notification it is evident that the respondents made it clear that in case any seats are left vacant then the second counselling will be on 30th September, 2004. Therefore, at least the respondents ought to have allowed one-day time to the petitioners to produce their original documents, because this situation was created by none else than the respondents themselves. On account of late receipt of approval for admission, they issued notification only on 27.9.2004 and asked the candidates to appear for counselling on 29.9.2004. Hence, by this arbitrary action the petitioners have been denied their just fundamental right to take education as per their merit and the action of the respondents being arbitrary cannot be justified as the same suffers from vice of arbitrariness.

10. Learned Deputy Advocate General further explained that in view of the dead line given by the Medical Council of India that no admission can be given after 30th September, 2004, the respondents were not left with any discretion, but to refuse the admission. But, I fail to understand, when the approval for admission was given to the respondents at a very later stage and they issued notification only on 27.9.2004 inviting the candidates to appear for counselling, the dead line of 30th September, 2004, could not have been enforced. At least, minimum seven days time from the date of notification ought to have been allowed to the candidates to produce their original testimonials. Looking to the last minute approval, the respondents

56

could have sought exemption at least up to 5th of October, 2004, in view of the peculiar facts and circumstances of the case. Therefore, the rule that the admission was to be given up to 30th September, 2004, cannot be made applicable strictly in the present case, looking to the above facts and circumstances.

11. Learned Deputy Advocate General urged that the effected candidates have not been arrayed as respondents; therefore, on this ground the petitioners' petitions are liable to be dismissed. But, I do not find any substance in this argument also. In the first instance, no such objection has been raised by the respondents in their return. Even otherwise, the petitioners are not seeking any relief against any individual candidate. They have filed their petitions against the unjust, arbitrary and irrational action of the respondents, refusing admission to them on irrelevant grounds.

12. Therefore, in view of the above, the petitions of the petitioners deserve to be allowed as the action of the respondents being arbitrary, unjust and irrational, the same cannot be sustained.

13. In the result, the petitions are allowed. The respondents namely, Director, Medical Education, State of Chhattisgarh, and Dean, Government Dental College, Raipur, are directed to consider the case of the petitioners for their admission in the Dental College, Raipur, and they be allowed at least seven days' time to produce their original testimonials. There will be no order as to costs.

Sd/-
L.C.BHADOO
Judge

Soma